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File No. O Pensions/46

Legal Department.

A **BRANCH**

Subject:— Opinions under the Pensions Act, 1871

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C O N T E N T S.

Legal Department File No. O. Pensions/46.

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"The fact that an estate is impartible carries with it the incident that it must be held by and descended to a single individual. This person may be ascertained by the rule of primogeniture or somoother mode of selection as might be customary." (See Gour's Hindu Code, p.715). In matters of succession to an impartible estate like the zamindari the rule of lineal primogeniture prevails. The rule of primogeniture may be defined as the succession of the oldest member of the eldest branch (see Sahebgouda v. Desangouda, 33 B.L.R.580 at p.584). The succession to the cash allowance in the present case is limited to the lineal male descendants in the male descent of Rupsing and by custom to a single heir. Consequently it is an impartible grant to which the rule of primogeniture will apply. Applying that rule it appears that on the death of Balesing in 1938 Anandsing was entitled to succeed to the allowance as the oldest member of the next oldest branch and consequently the recognition by Government of Barikrao of the junior branch as heir was not correct. It is true that as in the case of succession to partiable property, so in the case of impartible property each male owner becomes a fresh stock of descent (see Muttuvadugenadha Tevar v. Periasami 19 Mad.151; see Mulla's Hindu Law, p.618) and if Barikrao had been rightly recognised as heir after Balesing or Anandsing had acquiesced in his succession after his death, his son Ravan would have been the preferable heir. As pointed out above Barikrao's succession should not have been recognised by Government. In paragraph 2 of his letter at p.21 ante

the Commissioner observes:

> "Barikrao being the nearest male heir according to Hindu Law was recognised by the Collector as the legal heir to succeed to the deceased and his name was ordered to be entered to the cash allowance on September 8th, 1939. No notice of this decision appears to have been given to Anand Udesing until May 1940 before which (April 1940) Barikrao had actually died. The failure to appeal against the original order cannot therefore be held against the petitioner (i.e. Anandsing Udesing) and the present appeal should be held to be an appeal also against the original order allowing Barikrao to succeed."

It follows therefore that Anandsing cannot be said to have acquiesced in the decision of Government allowing Barikrao to succeed to the cash allowance after the death of Balesing. There would therefore be no legal objection to Government formally cancelling the original order and recognising Anandsing as lawful successor to the cash allowance.

Id/- P.N.M. 8/4/46.

Remembrancer of Legal Affairs

U.R. to R.D., No.2660, dated the 8th April 1946.

KAH/11-7.
4 c.

Office of the R[redacted]A.

It appears that on 3rd May 1945, Government of Bombay issued a sanad declaring that Naik Laxmibai, widow of Naik Yeshwantrao Balaji Ghadge V.C., shall in addition to a grant of Rs.10000, receive annually, during her life time, an assignment of Rs.500, of the Land Revenue of the village of Palasgaon and if at any time during the life of Bai Laxmibai Government receive from the village Palasgaon less than Rs. 500, Land Revenue, Government will pay the balance of Rs.500, from general revenues. Since Laxmibai is alleged to have neglected the interests of her mother-in-law and adopted son, the Commissioner, Central Division, and Chairman, P.S.S., and A. Board Poona, has requested Government to transfer the grantxx in trust to the Collector who should apply it in the best interests of the family of the late Naik. Government, xxx therefore proposes to issue the following order:-

"In the circumstances reported by Commissioner, C.D., and Chairman B.P.S.S. and A's Board Government is pleased to direct that the annual assignment of xxxx land revenue of the xxx value of Rs.500 p.a. sanctioned to Bai Laxmibai widow of Naik Yeshwant Ghadge V.C., in para. 1 of Government Resolution, H.D.(Poll) War No.S.D.II-267, dated 11th April 1945, should not henceforth be paid to her xxxxxxx,direct, but it should instead be transferred and handed over each year to the Collector and President of the D.S.S. and A. Board, Kolaba to be held by him upon trust to apply the same or any part thereof or the income thereof if any, for the benefit of the family of the late Naik Yeshwant Ghadge. If the assignment of xxxx land revenue in respect of the current year has not yet been drawn by Bai Laxmibai, that

amount should also be transferred and handed over to the [redacted] Collector etc. to be held by him upon trust for the purpose of spending it to the best advantage of the late Naik's family. The R.L.A. is requested to advise whether the proposed order is free from legal objection.

A sanad which is in the nature of a contract must be construed according to its terms and cannot be explained or interpreted by antecedent communings which led up to it (see Bomanji v. Secretary of State 31 B.L.R. 256 P.C.). The sanad issued in the present case provides for an absolute assignment of Rs. 500, of the land revenue of the village annually to Bai Laxmibai during her life time and consequently Bai Laxmibai's rights under the assignment cannot be curtailed nor interfered with except with her consent. The present proposal of Government amounts to a family settlement of the assignment which would be derogatory to the grant and a breach of the sanad. Consequently the present proposal of Government would not, it appears, be feasible.

Sd/-, P.N.M. 5/7/46.

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl) No.150-P, dated the 6th July 1946.

KAN/11-7.
4 c.